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IN THE SUPREME COURT  
STATE OF ARIZONA

In the Matter of	)	
	)	
PETITION TO AMEND RULES 4.2	)	
5.1, 5.4, 7.2, 7.4, 26.12 AND 27.8 OF	)	Supreme Court No. R-17-0015
THE ARIZONA RULES OF	)	
CRIMINAL PROCEDURE	)	<b>PETITIONER'S REPLY TO</b>
_____	)	<b>AACJ/APDA COMMENT</b>

The Petition in this matter received one comment in response to the Court's August 31, 2017 order distributing a modified version of the proposed bail eligibility rules for additional comment. The Arizona Attorneys for Criminal Justice and the Arizona Public Defender Association (AACJ/APDA) filed a joint comment.

**A. Authority to Adopt the Proposed Rules**

AACJ/APDA continue to urge the Court not adopt the proposed rules as modified by the court because key elements conflict with provisions of A.R.S. § 13-3961(D) and (E) that provide for a prosecutor motion and a hearing within 24 hours. They contend these provisions are substantive rather than procedural. In making this argument they ignore the substantive provisions of Article 2, Section 22(A)(3) of the

Arizona Constitution which provides an express exception to the right to bail for felony offenders who meet stated criteria. The proposed rules provide a practical procedure for the courts to perform their duty of applying these constitutional criteria in the criminal justice process. Under the language of the constitution this is not a discretionary duty as the commenter contends. The practicality of the proposed process is undisputed by any commenters. Additionally, commenters have acknowledged the impracticality in most if not all cases of the A.R.S. § 13-3961(D) and (E) procedures. The modified rules provide for the use of this procedure in any cases in which it is practical. As explained in the petitioner's reply, this is consistent with harmonizing procedural statutes and rules approved in Pompa v. Superior Court.<sup>1</sup>

The commenter contends the provisions of A.R.S. § 13-3961(D) and (E) are substantive “limited entry points” on the use of preventive detention rather than procedural means of determining whether preventive detention is warranted as provided in Article 2, Section 22(A)(3). Instead, practitioners have acknowledged that these statutory provisions have provided little or no entry point to preventive detention because they are impossible rather than “too difficult” to meet. This

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<sup>1</sup> Pompa v. Superior Court In & For the Cty. of Maricopa, 187 Ariz. 531, 931 P.2d 431 (Ct. App. 1997). citing State ex rel. Purcell v. Superior Court, 107 Ariz. 224, 227, 485 P.2d 549, 552 (1971); State v. Blazak, 105 Ariz. 216, 218, 462 P.2d 84, 86 (1969).

reading of A.R.S. § 13-3961(D) and (E) brings these provisions into conflict with the requirement of Article 2, Section 22(A)(3) that the court determine bail eligibility. To avoid conflict with this constitutional provision the motion by the state and the 24 hour hearing provisions of A.R.S. § 13-3961 must be regarded as methods and procedures that address the quality and timeliness of bail eligibility determinations not substantively whether those determinations may occur.<sup>2</sup> If these provisions are regarded as substantive legal requirements they would unreasonably hinder and effectively prevent the courts from performing the bail eligibility determination required by Article 2, Section 22 (A)(3).<sup>3</sup>

#### **B. Other Reasons for Delay or Denial.**

Commenters again urge delay or denial of this petition because Arizona's appellate courts have decided cases that impact some provisions of these rules and that other issues are unresolved. Commenters fail to explain why additional changes in the law cannot be addressed with future rules changes as needed.

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<sup>2</sup> Seisinger v. Siebel, 220 Ariz. 85, 203 P.3d 483 (2009).

<sup>3</sup> Dobson v. State ex rel. Comm'n on Appellate Court Appointments, 233 Ariz. 119, 309 P.3d 1289 (2013)

Wherefore, petitioner respectfully requests that the Court amend the Rules of Criminal Procedure as proposed in Appendix B of the Court's August 31, 2017 order in this matter.

RESPECTFULLY SUBMITTED this 28 day of September, 2017.

By /S/  
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